H.R. 133: Consolidated Appropriations Act
ASA Key Provisions

The FY2021 omnibus COVID stimulus and relief bill funds the federal government through the end the current fiscal year (September 30, 2021) and includes COVID-19 relief and other health policy provisions.

Key provisions include:

**Surprise Medical Bills:**

Protects patients from surprise medical bills and creates an Independent Dispute Resolution Process (IDR). These provisions are effective January 1, 2022.

Specifically, prohibits surprise billing (balance billing) by providers and facilities in emergency and non-emergency situations.

Patients are only responsible for in-network cost-sharing. There are also transparency requirements for plans and providers as it relates to providing the patient information, including updated directory information. The bill also stipulates:

- Plans will make an initial payment to the out-of-network provider.
- If there is a payment dispute, providers and plans can attempt to negotiate for 30-days before arbitration begins.
- After 30 days, the physician can elect to enter into arbitration.
- No threshold to enter into arbitration and disputed claims can be batched together.
- The arbiter can consider all information submitted by the provider and insurer, including the median in-network rate, complexity of the case, and market power of the provider and payor, among other things. However, the mediator cannot consider public payor rates (e.g., Medicare and Medicaid) or billed charges.
- Arbitration process is baseball-style (each party submits an offer, and the mediator has to choose one of the two offers). The decision is final, and payment must be made within 90 days. The loser is responsible for the fees.
- Providers and insurers cannot initiate a new arbitration process for 90-days for the same item/s or service/s. However, payors are still required to provide regular payments to providers within this window. Providers can continue to collect and batch cases during the “cooling off” period and submit them for arbitration after the 90 days concludes.
- Creates an interim report to Congress two years after enactment to ensure rigorous oversight of the development of the arbitration process.

Significant rulemaking will be required over the next year to facilitate implementation of this law.

**Medicare Payment Cuts:**

Includes partial relief from the previous draconian Medicare cuts scheduled for January 1, 2021.

- Includes $3 billion to CMS for the Medicare Physician Fee Schedule in 2021 to help reduce the planned negative payment adjustment resulting from increased spending on evaluation and management (E/M) codes and a three-year moratorium on a new E/M add-on code to report patient complexity. It’s projected that this 3.75% add on to the conversion factor will mitigate the 10% cut by about two-thirds. The anticipated cut to the anesthesia conversion factor is 2%.
- Three-month delay of the scheduled 2% Medicare sequestration cuts.
Other Medicare Provisions:

- Freezes the Alternative Payment Model (APM)/MACRA thresholds for two years.

**Rural & Underserved Populations**: Creates a new, voluntary Medicare payment designation that allows Critical Access Hospitals or a small, rural hospital with less than 50 beds to convert to a Rural Emergency Hospital (REH) for hospitals that can no longer support a fully operational inpatient hospital. REHs will be reimbursed under all applicable Medicare prospective payment systems plus an additional monthly facility payment and an add-on payment for hospital outpatient services, as defined in the legislation.

- Expands permanently telehealth for mental health services.

Graduate Medical Education (GME):

- Creates 1,000 new Medicare-supported GME positions to be phased in through 200 slots available each year. The slots will be prioritized to training programs in rural areas, hospitals training residents over their cap, states with new medical schools, and providers that care for underserved communities in the distribution of these new residency positions.

- The legislation also contains fixes to issues with underutilized Rural Training Track programs, and a fix for artificially low resident caps at smaller teaching hospitals.

Medicare Extenders:

In general, a number of the Medicare, Medicaid, public health provisions which are typically extended annually are extended for three years. Some key extenders include:

- Extension of the work geographic index floor under the Medicare program. This section increases payments for the work component of physician fees in areas where labor cost is determined to be lower than the national average through December 31, 2023.

- The national health service corps, community behavioral health centers, special diabetes, teaching health centers were through FFY 2023.

- Extension of funding for **quality measure endorsement, input, and selection**.
  - This section provides $66 million in funding to CMS for quality measure selection and to contract with a consensus-based entity to carry out duties related to quality measurement and performance improvement through September 30, 2023.
  - It also includes additional reporting requirements, facilitates measure removal, and prioritizes maternal morbidity and mortality measure endorsement.

Provider Relief Fund:

- Includes an additional $3 billion in grants for hospitals and providers through the Provider Relief Fund established by the CARES Act in March 2020. Enables reimbursement for health care related expenses or lost revenue directly attributable to the public health emergency.

- Further stipulates that funds can be used for building or construction of temporary structures, leasing of properties, medical supplies and equipment **including personal protective equipment** and testing supplies, increased workforce and trainings, emergency operation centers, retrofitting facilities, and surge capacity.

- Directs 85% of unobligated balances or funds recovered to be for future distributions based on applications that consider financial losses and changes in operating expenses occurring in the third or fourth quarter of calendar year 2020, or the first quarter of calendar year 2021; (which is similar to the structure of the Phase 3 distribution).

- Allows more flexibility for health systems to distribute the targeted PRF distributions within their own systems.
Small Business - $325 Billion:

- Includes $284 billion for the Paycheck Protection Program (PPP) and extends PPP through March 31, 2021. Changes to PPP include:
  - Provides a second PPP forgivable loan for the hardest-hit small businesses and non-profits with 300 or fewer employees and that can demonstrate a loss of 25% of gross receipts in any quarter during 2020 when compared to the same quarter in 2019;
  - Creates a dedicated $15 billion set-aside for lending through community financial institutions, including Community Development Financial Institutions and Minority Depository Institutions to increase access for minority-owned and other underserved small businesses and nonprofits;
  - Creates a set-aside for very small businesses with 10 or fewer employees and for small businesses located in distressed areas;
  - Expands PPP eligibility for more critical access hospitals, local newspapers and TV and radio broadcasters, housing cooperatives, and 501(c)(6) nonprofits, including tourism promotion organizations and local chambers of commerce;
  - Adds PPE expenses as forgivable expenses;
  - Simplifies the forgiveness process for loans of $150,000 and less;
  - Repeals the requirement of deducting an EIDL Advance from the PPP forgiveness amount.

EIDL Grant Program:

- This bill includes $20 billion for EIDL Advance grants.
- Small businesses and nonprofits in low-income communities are eligible to receive $10,000 grants.
- Any small businesses and nonprofits in low-income communities that received an EIDL Advance previously are also eligible to receive the full $10,000 if their award was less in the first round of grants.

Clarification on Tax Treatment of Paycheck Protection Program Loans:

- The bill specifies that forgiven Paycheck Protection Program (PPP) loans will not be included in taxable income.
- It also clarifies that deductions are allowed for expenses paid with proceeds of a forgiven PPP loan, effective as of the date of enactment of the CARES Act and applicable to subsequent PPP loans.
- This same tax treatment also applies to EIDL grants and certain loans and loan repayment assistance.

Extended SBA Debt Relief Payments:

- Provides $3.5 billion to resume debt relief payments of principal and interest (P&I) on small business loans guaranteed by the SBA under the 7(a), 504 and microloan programs.
- All borrowers with qualifying loans approved by the SBA prior to the CARES Act will receive an additional three months of P&I, starting in February 2021.
- Going forward, those payments will be capped at $9,000 per borrower per month.
- After the three-month period described above, borrowers considered to be underserved—namely the smallest or hardest-hit by the pandemic—will receive an additional five months of P&I payments, also capped at $9,000 per borrower per month.
- SBA payments of P&I on the first 6 months of newly approved loans will resume for all loans approved between February 1 and September 30, 2021, also capped at $9,000 per month.

Enhancements of SBA Lending Programs:

- This bill provides $2 billion to enhance SBA’s core programs, including 7(a), Community Advantage, 504, and the Microloan program, by making them more affordable and useful to small businesses.
• It also provides $57 million for the SBA Microloan Program to provide technical assistance and leverage about $64 million in microloans for minority-owned and other underserved small businesses.

$4.25 billion for mental health and substance abuse prevention and treatment, including:
• Support for opioid prevention, treatment, and recovery

National Institutes of Health:
• $1.25 billion to support research and clinical trials related to the long-term effects of COVID-19, as well as continued support for Rapid Acceleration of Diagnostics for COVID-19.

Vaccines, Testing and Tracing:
• $19.695 billion for BARDA for vaccine, therapeutic, and diagnostic development.
• $8.75 billion for CDC for vaccine distribution:
  • $4.5 billion to states, localities and territories;
  • $210 million for the Indian Health Service; and
  • $300 million for high-risk and underserved populations.
• $3.25 billion for the strategic national stockpile.
• $22.4 billion in direct grants for states, territories, and tribes for testing, contract tracing, and surveillance:
  • $2.5 for high-risk and underserved populations; and
  • $790 million to the Indian Health Service.